Revenue (1924) Department.

N. Kanara SERIES.

G.O. No. 1087

DATED 14-6-24

[Despatch Abstract.]

Escheat - (South Kanara) - Karkal taluk - Kanthavara village

Property of late K. Seetaramacharya State's claim not to be asserted.

Revenue **DEPARTMENT.**

CURRENT No. 1921 2

Received 23 APR 1928 192 *Registered* 26 4 192 8

Subject.

Escheat (South Kanara) - Karkal taluk - Kanthavara village - Property of late Seetaramacharya.

ENCLOSURES.
No.
Spare copies

Reference No. K. 59/28-1

Station Madras *Dated the* 25th April 192 8

From

B.G.Holdsworth Esq., I.C.S.,
Secretary Land Revenue. and
The Board of Revenue, ~~Revenue Settlement, etc.~~
~~Separate Revenue.~~

The Hon'ble Mr. H.A.B.Vernon I.C.S.,
Commissioner of Land Revenue.

~~Resolution~~
~~Reference.~~ Read the following:-

From the Collector of South Kanara Ref. on C.No.5107-25-A3 dated 27th March 1928.

Reference

Submitted to Government for oders under B.S.O. 197-3.

2. The property of a deceased person can be declared escheat only on a total failure of heirs at the time the succession opened (i-e.) in the present case, on the date of death of the widow, Venkamma. As one of the daughters, namely Padakke who was clearly an heir to the property survived the widow, the property cannot be escheated.

3. The Board considers that even otherwise, the case for Government is not strong. The property was alienated

by the widow more than 44 years ago and there is probably now no one who can give evidence to prove the validity of the alienation. The consideration for the sale was -- Rs.8000/- of which Rs.4000/- were for liquidating the debts contracted by the full owner Seetharamacharya and are therefore binding on the property. In the circumstances, the Board doubts whether the court will hold the alienation as invalid - vide para 640 of Mayne on Hindu Law and usage . ninth edition. The Board recommends that in view of the above reasons the State's claim to the property in question need not be asserted.

27-4-28

for Secretary.

To the Secretary to Government, Revenue Department
with records of enquiry to be returned.

Copy to the Collector of South Kanara.

M.R.V./26-4-28.

26-4

Ref. on C.No. 5167-25-A3.

Application for declaring immoveable property Escheat

South Kanara District.

1. Taluk. Karkal

2. Village Kanthavara.

3. Description of property.

Wet.	Garden.	Dry.	Wet.	Garden.	Dry.
78/1,8,23, 78/10,15,25, 78/7,12,13, 78/14 & 46/4.	78/6A 78/16, 78/20, 78/22,9. 78/26 & 11.	78/17, 78/18.	250/1, 251/1, 251/2, 251/3,	250/2, 251/5, 251/6, 251/7.	251/4

4. Area in acres.

Wet.	Garden.	Dry.	Wet.	Garden.	Dry.
27.68	2.61	0-72	23.73	0.51	0-21

5. Assessment or quit-rent.

134-9	7-9	0-11	86-2	1-7	0-3
Total Rs. 142-13-0			Total Rs. 87-12-0		

6. Estimated yearly rent value. 152 muras of rice and Rs. 346/- in cash.

7. Estimated market value. Rs. 17,000-0-0 and Rs. 1000/- on account of value of buildings.

8. Date of the death of the last owner. About 1880.

9. Date of publication of notice inviting claims. Notice published in the District Gazette for July 1927, dated 25th July 1927.

10. Names of claimants and their relationship to the deceased. His Holiness Raghumanya Thirtha Swamier of Palmar Mutt, Udipi not related to the deceased.

11. Particulars of objections raised. ---

12. Collector's recommendation. Vide separate sheets.

South Kanara Collector's Office,
Mangalore, 27th March 1928.

(Sd) - -
for Collector.

To the Secretary to the Board, Land Revenue and Settlement,
Madras.

Column.12.

One Kedilaya Seetaramacharya, a Hindu Shivalli Brahmin governed by the Hindu Mithakshara Law of Succession was the original owner of this property. He died about 1880 leaving behind him a son name Appayachari two daughters Paddakke and Appi and a widow Venkamma. The son Appayachari succeeded to the property and was in enjoyment of it for about 2 or 3 - years as a minor under the guardianship of his widowed mother Venkamma. He then became the Swamier of the Palmar Mutt of Udipi and was named Raghupriya Thirta Swami. He thus lost his right to the property of his father and the - property accordingly devolved on his widowed mother Venkamma. Venkamma who was only the limited owner of the property as reversioner to her son sold it to her brother Ramakrishna Rao for Rs.8,000/- under a registered sale deed No. 169/1884, - dated 5th February 1884. Ramakrishna Rao who pre-deceased - Venkamma left a will registered No.10, dated 12th November 1887 empowering his two wives to make over the property to Raghupriya Thirtha Swamier of Palmar Mutt saying that the sale deed though in his favour was actually effected for and on behalf of the - Swamier with the Swamier's funds. The two wives made over the property to Raghupriya Thira Swamier and it is now in the possession and enjoyment of his desciple Raghumanya Thirtha - Swamier of the Palmar Mutt.

2. Enquiry shows that there are now no heirs of any kind to the property. Appayachari died as a Swamier. His sister Appi died long ago without issue. Venkamma died - shortly after her brother Ramakrishna Rao's death. Appayachari's sister Paddakke who was the only surviving heir to the property also died on 25th March 1926. The property thus became liable to be escheated to Government. The usual notice was accordingly published in the District Gazette for July 1927, dated 25th July 1927 stating that it was proposed to escheat the property and inviting claims to it.

3. In response to this notice of which the period -

expired at the end of January 1928, the present Swamier of Palmar Mutt, Raghumanya Thirtha Swamier filed a petition - asserting his right to the property. The main ground urged by him is that the sale deed executed by the widow Venkamma in favour of her brother Ramakrishna Rao through whom the - Swamier got the property is valid in law as it is not only for an adequate consideration of Rs.8,000/- but also one - necessitated for discharging the true,valid and binding debts contracted by her husband Seetaramacharya and also fhr dis - charging other valid debts which under the Hindu Law are - binding on the estate. The details of the consideration paid by Ramakrishna Rao as given in the sale deed in his favour are:-

(i) Rs.3,500/- due under a simple mortgage deed registered No. 288/1873, dated 3rd March 1873 executed by Seetaramacharya in favour of Bola Subraya Shanbhogue and the balance of - interest of Rs.100/- due thereon till the date of sale - stipulated to be paid by the Vendee Ramakrishna Rao to the mortgagee Subraya Shanbhogue.

(2) Rs.400/- being the balance of the mortgage amount of Rs.2,000/. due from Seetaramacharya to the said Subraya Shanbhogue's father Manjaya Shanbhogue under a registered mortgage deed No.289/1873, dated 3rd March 1873 executed by the said Seetaramacharya by mortgaging the muli right in the property.

(3) Rs.2,000/. with interest of Rs.450- thereon due from Seetaramacharya to Ramakrishna Rao on account of loans obtained by handchits now and then for building the new house in the mulgeni property muli No.95 of Shivalli Casba village.

(4) Rs.500/- borrowed by the widow Venkamma from Ramakrisha Rao for defraying the charges of funeral obsequies of her deceased-husband Seetaramacharya and Rs.120/- interest thereon.

(5) Rs. 930/- paid in cash in the presence of the Sub-Registrar for the marriage ceremony of her daughter and for defraying the expenses connected with her purification.

The point is whether, as contended by the claimant, the sale deed in question is valid in law. There can be no doubt that the widow Venkamma had only a limited interest in the property and that under the Hindu Law she had no power to encumber or alienate it except for purposes recognised as necessary by law. The Hindu Law recognises all the items detailed above as debts binding on the estate provided there was absolute necessity to contract them. In this case all the 5 items referred to in the sale deed cannot be said to have been necessary. Items 1 and 2 are the debts contracted by the full owner Seetaramacharya and are therefore anyhow binding on the property. The 3rd item is described as the hand loan obtained now and then for building a house in the mulgeni proper In the absence of definite proof that it was actually obtained as a loan by Seetaramacharya, it cannot be admitted as a debt binding on the estate. The claimant has not produced any documents in support of it. The 4th item which is described as the charges of funeral obsequies of the deceased Seetaramacharya is too large a sum to be allowed. So also the 5th item. The necessity for contracting these debts and for the sale of the property as a consequence is questionable. There was absolutely no one except the widow Venkamma to be maintained out of the income of the property. The property including also the mulgeni property which has not been claimed as escheat was pretty large. The gross income therefrom could not be less than about 200 muras of rice. This income even after payment of the interest on the 1st 2 items of debts contracted by Seetaramacharya under mortgage deeds and after payment of assessment was more than sufficient to meet all the necessary and valid expenses. The alienation though in favour of the widow's own brother who was a reversioner at the time was evidently made with the object of eventually benefitting her own s on the then Swamier who but for his installation as Swamier could have continued as the actual heir to the property. These circumstances lead to the strong presumption that items 3 to 5 mentioned in the sale deed of 1884 were only created to strengthe

the alienation by the widow. I doubt very much whether the claimant will be able to prove the binding nature of these debts and the necessity for the alienation. The local Government Pleader who was consulted says that the sale deed of Venkamma will not stand as against the claim of Government and was invalid beyond her life and therefore neither, the sale deed to her deceased brother nor the subsequent gift to the Swamier are of any use.

4. The Swamier further contends that the Bola property appertaining to muli No.30 is mulgeni and is therefore not liable to escheat, that plots S.Nos.

25,10, 11, 12, 14, 26, 15, 7 & 9 of Kantavar village appertaining to muli warg No. 13 of the said village belong to the Palmar Mutt in its own right under the sale deed, dated 10th November 1837 and that S.No. 46/4 of Kantavar village is also mulgeni to Seetaramacharya as will be evident from the sale deed of 1884 and that therefore they are not liable to escheat to Government. The enquiry held through the Tahsildar of Karkal Taluk in this connection shows beyond doubt that this contention also is quite untenable. The mulgeni chit of 1858 produced by the Swamier shows that bettu fields of 8 muras seed capacity out of the entire property of muli warg No. 30 of Bola village was leased out on a mulgeni of Rs.10 to one Gururaya by the mulgar Narayana Udpa and his son Anantha alias Annya. The mulgenidar Gururaya sold his mulgeni right over these bettu fields to one Annayachari who is said to be the brother-inlaw of Seetaramacharya. It is not clear how Seetaramacharya can succeed to the meulgeni interest of his brother-in-law. The Swamier has not produced any documents to show it. On the other hand the registered mortgage deed, dated 3rd March 1873 executed by Seetaramacharya in favour of Bola Subraya Shanbhogue for Rs.3500 clearly shows that Seetaramacharya possessed absolute right over the enti property of muli warg No.30 of Bola village. The inference therefore is that some other documents came into existence.

after the mulgeni deed of 1858 produced by the Swamier and Seetaramacharya became the absolute owner of the property though it cannot be said how and when. At any rate the Swamier's contention that Seetaramacharya possessed only mulg interest in it falls to the ground under the mortgage deed of 1873 referred to above.

The Swamier cannot also claim exclusive right over the property appertaining to muli warg No.13 of Kantavar village. The sale deed of 1837 produced by him goes to show that one Mahalaxmi and her adopted son Somanna kept for themselves a portion of this property and sold the rest to the Palmar Mutt The portion kept by Mahalaxmi and her alleged adopted son have been identified as S.Nos. 78/10 and 15 of Kantavar villa while the other plots viz., S.Nos. 78/25, 78/11, 12,14,26, 5 and 9 of the said village must be those sold to the Mutt. Mahalaxmi was a widow & having no heirs. Somanna was described in the sale deed as her adopted son. One Kuppa Bhatta an old man of 69 years who is a resident of the village was examined by the Tahsildar of Karkal in this connection. He has deposed that the adoption in question was declared to be invalid in a competent Civil court. This must be true as otherwise there was no reason for Seetaramachary to become the owner of this property if the sale deed in favour of the Mutt continued in force. When the adoption was declared invalid, the sale deed executed by the widow and the adopted son became null and void and thus the property must have been subsequently purchased by Seetaramacharya or his predecessors-in-title from its rightful owners. The sale deed of 1837 produced by the Swamier in support of his claim cannot therefore help him in any way.

As regards 46/4, it cannot be admitted that it is mulgeni property. The document of 1873 i.e. the simple mortgage deed No.288/3-3-1873 described above clearly shows that the mulgeni property is one yielding a mulgeni rent of Rs.6-10-6. This property has been identified to be S.Nos. 46/1.2 and 6. It is only in the subsequent document of 1884 i.e., the sale deed

executed by the widow Venkamma in favour of her brother Ramakrishna Rao that the mulgeni rent of the property was shown as Rs. 8-12-0 by including in it the revenue assessment of Rs.2-1-8 of S.No. 46/4. The addition must have been deliberately done. In the face of the document of 1873 which excludes 46/4 from the mulgeni property, the Swamier cannot contend that it is mulgeni.

5. The Swamier finally says that the rights of Government cannot prevail over those of the Mutt on the ground that Seetaramacharya was a Shishya and a trusted and staunch desciple of the Mutt and that in the absence of heirs to him the Mutt must get the property under the Hindu Law. There is no provision in the Hindu Law to this effect. A swamier is certainly not entitled to succeed to the property of a Brahmin simply because that Brahmin is one of his Shishyas.

6. In these circumstances, I recommend that the property may be declared an escheat to Government. The Swamier does not from his attitude appear to be likely to surrender the property to Government without a suit. If a suit is filed there is no doubt that the Swamier will actively defend it. I request therefore that the Government Pleader Madras or the Advocate General may be consulted before declaring the property an escheat. I shall submit the necessary draft plaint on receipt of orders on this application.

7. The connected records of enquiry of 260 pages are enclosed for favour of reference and return.

JV
26/4

Rev. Deptt

Escheat - (South Kanara) - Karkal Taluk - Kanthavara village - Property of late Seetaramacharya.

C.No. 1926 B/28. From the Board of Rev Lr. dt. Ref. K 59/28-107.25-4-2

To Secy.

Please see the ~~Collector's~~ Board's Ref. at pp. 1-2 ct.

The file deals with the question of declaring the property of late Seetaramacharya as escheat to the Govt. For a history of the case please see the Collector's report at pp. 5-6 ct.

3. The Collector recommends that the property may be declared an escheat to the Govt for the following reasons.

Venkamma the widow of late Seetaramacharya had only a limited interest in the property and that under the Hindu Law she had no power to encumber or alienate it except for purposes recognized as necessary by law. The sale deed executed by her in favour of her brother Ramakrishna Rao was for

consideration of Rs 8000/- paid by
latter as detailed at p. 6 c.f
The Collector is of opinion that all the
items of debts mentioned at p. 6 cf.
cannot be said to have been
necessary and that items 3 4 and 5
~~were~~ were only created to strengthen
the alienation by the widow.

2. The Local Government
Pleader who was consulted by the
Collector is of opinion that the sale p. 8 cf
deed of Venkamma will not stand
as against the claims of the Govt and
that it was invalid beyond her life
and that therefore neither the sale
deed to her deceased brother (Ramakrishna
Rao) nor the subsequent gift to the
Swamies are of any use.

3. The Board of Revenue does
not recommend the Collector's proposal
for the reasons given in its Ref. at
pp. 1. 2 cf.

4. As stated by the Board
of Revenue the consideration for the
sale ~~of~~ was Rs 8000/- of which
Rs 4000/- were for liquidating the
debts contracted by the full owner
Seetaramacharya and are therefore

binding on the property. The qu
now is whether the remaining su
of Rs 4000/- was a necessary debt
The Collector has stated that ite
(3) cannot be admitted as a debt
binding on the estate in the
absence of definite proof and that
the claimant has not produced
any documents in support of it
Items (4) & (5) are the Collector has state
too large a sum to be allowed. He
has therefore urged that the States
claim to the property should be asser
The Local Govt Pleader's opinion also
seems to be in favour of the Govt. In the circums
it is for orders whether the Advocate
General may be consulted on the
question of declaring the property as
Escheat to the Govt as suggested by the
Collector

5/5/28

Draft awaiting the Boards view

To Secy.

Draft order submitted for approva

Mad. II-5 (a)—38,004—26-10-27. (6)

Rev DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	18/5	
When examined ..	18/5	
When signed ..	18/5	
When despatched ..		

READ AGAIN G.O. No. ..... , dated 192

" " " " ..... " 192

READ ALSO :—

C. No. 1926 B/28 From the Board of Rev (LR&S), No. Rf IK 59/28-1, dated 25-4-1928.

" " " " " " 192

" " " " " " 192

Dft Edwards 18/5/28. ORDER. Mis.

No. 1084, dated 18-5-1928.

The Govt accept the recommendation of the Board of Revenue that the State's claim to the property of late Kedilaya Seetharamacharya of Kanthavara village, Karkal taluk, South Kanara Dt., need not be asserted.

16.5.28.

V

To the Board of Rev (LR&S).
(with Records of enquiry held)

Mis 10.5.28
OL 11.5.28